United Nations S/2003/255

Security Council

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6 March 2003
English
Original: Arabic

Letter dated 3 March 2003 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council

I have the honour to write to you in reference to document S/2003/40 dated 14 February 2003 concerning matters of which the Security Council is seized and the stage reached in their consideration. In this connection, on instructions from my Government, I have the honour to inform you that the Syrian Arab Republic requests the retention of the following items listed in paragraph 8 of the above-mentioned document:

1. The Palestine question.

16. The Middle East problem, including the Palestinian question.

19. The question of the exercise by the Palestinian people of its inalienable rights.

26. Letter dated 4 February 1986 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council (S/17787).

I take this opportunity to reaffirm the position of the Syrian Arab Republic set out in its note No. SC/GEN/46 dated 9 February 1998 (S/1998/111) addressed to the President of the Security Council.

I should be grateful if you would have this letter circulated as a document of the Security Council.

(*Signed*) Mikhail **Wehbe**
Ambassador
Permanent Representative

03-27064 (E) 070303 070303

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Identical letters dated 4 March 2003 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General and to the President of the Security Council

On instructions from my Government, I have the honour to transmit to you herewith the daily report on the activities carried out by the inspection teams of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) and the International Atomic Energy Agency (IAEA) in Iraq on 4 March 2003.

I should be grateful if you would have this letter and its annex circulated as a document of the Security Council.

(*Signed*) Mohammed A. **Aldouri**
Permanent Representative

03-27045 (E) 130303 130303

Annex to the identical letters dated 4 March 2003 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General and to the President of the Security Council

Activities of the UNMOVIC and IAEA inspection teams in Iraq

Inspection activities carried out on 4 March 2003

I. UNMOVIC inspection team (chemical)

The team left the Canal Hotel in Baghdad at 9 a.m. to inspect the premises of the Nahrawan site of the Bassel State Company, an affiliate of the Military Industrialization Corporation (MIC). The team inspected one of the new pilot units and learned about its working methods, then inspected the other areas of the site. After completing its assignment, which lasted one hour, the team returned to the Canal Hotel.

II. UNMOVIC inspection team (biological)

The team left the Canal Hotel in Baghdad at 10.30 a.m. for the site of the Ibn Firnas State Company, an affiliate of MIC. It asked about the company's activities with respect to remote-controlled aircraft (types and sizes), then examined the aircraft which were currently on site. The team then inspected the factories and areas devoted to the manufacture of remote-controlled aircraft. After completing its assignment, which lasted 3 hours 40 minutes, the team returned to the Canal Hotel.

III. UNMOVIC inspection team (missiles)

1. The first group left the Canal Hotel in Baghdad at 8.40 a.m. and travelled to the site in Taji district where the Technical Battalion is stationed. The group observed the destruction of three Sumud-2 missiles, five missile engines and one launching platform. Once the destruction process, which lasted five hours, was complete, the group returned to the Canal Hotel.

2. The second group left the Canal Hotel at 8.30 a.m. for the Ma'mun factory, a subsidiary of the Rashid State Company. The group observed the destruction of a second solid fuel casting chamber. A small group then went to the site of the Qa`qa` State Company and tagged Sumud-2 missile warheads. After completing its assignment, which lasted seven hours, the group returned to the Canal Hotel.

IV. U-2 surveillance aircraft

At 9.45 a.m., a U-2 surveillance aircraft entered Iraqi airspace and spent 6 hours 25 minutes overflying various regions of the country. The aircraft left Iraqi airspace at 4.10 p.m.

V. Meetings

UNMOVIC requested to meet in person with three Iraqi experts in a hotel in Baghdad. The National Monitoring Directorate contacted two of them and encouraged them to meet the inspectors in person. The third expert could not be contacted as he was abroad. UNMOVIC met one of the experts but not the other, because he insisted that the interview should be recorded.

VI. UNMOVIC joint inspection team in Baghdad

At 8.10 a.m., two inspectors left the Rashid airfield on board a helicopter to carry out a reconnaissance flight over the site of the North Oil Company, which belongs to the Ministry of Oil. The inspectors took photographs of all the installations belonging to the company. After completing their assignment, which lasted one hour, the inspectors returned to the Rashid airfield.

VII. UNMOVIC joint inspection team in Mosul

The team left the Nineveh Palace Hotel in Mosul at 9 a.m. and travelled to the Customs Department for the northern region, which comes under the Ministry of Finance. The team met Department officials and questioned them about the number of warehouses, the type of goods stored and the number of employees. The officials were also asked whether customs files existed and whether they had any computers. The team examined the Department's files, then inspected the warehouses and areas belonging to it. After completing its assignment, which lasted two hours, the team returned to the Nineveh Palace Hotel.

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Progress report of the Secretary-General on Ethiopia and Eritrea

I. Introduction

1. The present report is submitted pursuant to paragraph 12 of Security Council resolution 1320 (2000) of 15 September 2000. It provides an update on developments since my report of 20 December 2002 (S/2002/1393) and describes the activities of the United Nations Mission in Ethiopia and Eritrea (UNMEE), whose mandate was extended until 15 March 2003 by Security Council resolution 1434 (2002) of 6 September 2002. The report also includes an update on UNMEE activities related to the provision of assistance to the Eritrea-Ethiopia Boundary Commission, as mandated by the relevant Council resolutions.

II. Status of the Temporary Security Zone and adjacent areas

2. During the period under review, the situation in the Temporary Security Zone and its adjacent areas remained generally calm. UNMEE continued to conduct extensive aerial reconnaissance and ground patrols of the Zone, as well as frequent inspections of militia and police weapon cantonment sites there, and maintained checkpoints and standing patrols at various strategic locations. The armed forces of Ethiopia and Eritrea cooperated relatively well with UNMEE, and no significant changes in military activities were observed on either side of the Temporary Security Zone.

3. Since my last report, however, local Ethiopian herdsmen and their livestock have been entering grazing land around Drum Drum and Gafnath Aromo in Sector Centre in the Temporary Security Zone almost on a daily basis. Despite the persistent efforts of UNMEE peacekeepers to dissuade the Ethiopian villagers from grazing their cattle inside the Zone, the practice has continued unabated. While these incursions have been relatively peaceful in nature, they have become a source of tension in the area, and on 18 December 2002 an Ethiopian herdsman was found shot inside the Zone. In cooperation with the two parties, UNMEE investigated the incident, but was unable to determine the perpetrator.

4. On balance, the parties and the local population have shown restraint in the aftermath of the fatal incident mentioned above. However, incursions across the southern boundary of the Temporary Security Zone could have a serious

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destabilizing effect and therefore can have considerable implications for the peace process. As a result, UNMEE has been working to keep the situation calm and meeting with local authorities to encourage them to be more active in preventing cross-border incidents.

Freedom of movement of the Mission

5. At the same time, UNMEE continued to experience restrictions on its freedom of movement and denial of access to appropriate military authorities by Eritrea, primarily in Sector East, in violation of the model status-of-forces agreement, which it has agreed to respect. In Ethiopia, UNMEE personnel entering or exiting the international airport in Addis Ababa continue to be subjected to strict immigration formalities in violation of the existing status-of-forces agreement.

6. Regrettably, there has also been no progress regarding the establishment of a direct high-altitude flight route for UNMEE aircraft between Asmara and Addis Ababa. As a result, UNMEE has been compelled to continue flying between the two capitals via Djibouti and/or Assab. In addition to serious operational and security implications for the Mission, these flight deviations have resulted in considerable additional expense, totalling $2,290,000 to date. As hostilities between Ethiopia and Eritrea ceased almost three years ago, I appeal to both parties to resolve this issue in a spirit of compromise, for the security and to the great benefit of my Special Representative and his staff, who are working hard to bring lasting peace to the two countries.

Military Coordination Commission

7. The Military Coordination Commission held its fifteenth meeting in Nairobi, on 29 January. The meeting focused primarily on recent incidents within the Temporary Security Zone and its adjacent areas, and on ways of strengthening existing mechanisms for resolving potentially disruptive incidents at the local level. The Military Coordination Commission also discussed preparations for demining in support of demarcation of the border, which will require proper coordination and cooperation by the parties at all levels. The possibility of holding meetings of the Military Coordination Commission in the two capitals was also revisited, but no agreement could be reached on this issue. The next meeting is therefore scheduled to take place in Djibouti on 19 March.

Deployment of the mission

8. Following the withdrawal from UNMEE of the Italian aviation unit in December 2002, Uruguay agreed to contribute an aviation unit equipped with special helicopters for night evacuations. This unit was deployed on 8 February. Otherwise, there have been no major changes in the deployment of UNMEE. As at 26 February, the total strength of its military component stood at 4,082 personnel, comprising 3,753 troops, 117 headquarters staff officers and 212 military observers (see annex II).

9. The Eritrean authorities have maintained their position that UNMEE national staff should discharge national service obligations. Instances of detentions of such national staff, apparently relating to national service obligations, have not ceased. The detention of national staff on this ground contravenes relevant provisions of the model status-of-forces agreement as well as the 1946 Convention on Privileges and Immunities of the United Nations. My Special Representative has formally protested the imposition of national service obligations on staff members and will continue to pursue the matter.

10. On 20 January, Ms. Angela Kane (Germany) assumed her functions as my Deputy Special Representative in Asmara. The filling of this post was particularly important as the Mission has entered the next crucial phase of its work.

11. Finally, UNMEE has initiated a mission-wide Lessons Learned and Best Practices project, in order to strengthen its planning and operations and to share relevant experience with United Nations Headquarters and other peacekeeping operations.

III. Eritrea-Ethiopia Boundary Commission

12. In recent meetings with my Special Representative, Prime Minister Meles Zenawi of Ethiopia and Foreign Minister Seyoum Mesfin expressed their serious concerns regarding the Boundary Commission's demarcation of the border. While emphasizing Ethiopia's commitment to peace and to the Algiers Agreements, the Prime Minister noted that if its concerns were not properly addressed, Ethiopia might eventually reject the demarcation-related decisions of the Commission. My Special Representative immediately consulted with the representatives of the Guarantors and Facilitators of the peace process, as well as the group of Friends of UNMEE, in Addis Ababa and in Asmara regarding Ethiopia's position.

13. On 8 and 9 February, the Commission met in London with the parties. My Special Representative attended this meeting as an observer. As a gesture of the United Nations solidarity with both the parties and the Boundary Commission in the implementation of the delimitation decision, I addressed letters to Prime Minister Meles and President Isaias Afwerki urging them to participate in the meeting in a constructive manner. I also took the opportunity of those letters to assure the two leaders that the United Nations would be prepared, without compromising the Boundary Commission's decisions, to facilitate the resolution of problems that may arise as a result of the transfer of territorial control, as provided in article 4.16 of the Algiers Agreement of December 2000.

14. In the eighth report of the Boundary Commission (annex I to the present report), its President provides a detailed account of the discussions in London and other developments which are a source of concern to the Commission, and which he felt obliged to report without further delay. In view of the legal importance of the Commission's observations, I trust that the Security Council will consider them carefully and in their totality. I broadly share these concerns, and wish to reiterate my support for the Boundary Commission.

15. Meanwhile, in fulfilment of its adjusted mandate under resolution 1430 (2002) of 14 August 2002, the Mission has provided practical support to the Boundary Commission in the implementation of the delimitation decision. In this connection,

the UNMEE Mine Action Coordination Centre continued to make good progress in mine clearance in key border areas as described in section IV below.

16. With regard to the provision of security for all Boundary Commission personnel in the field — both the field office staff and, in due course, the contractors — UNMEE remains of the view that this is the basic responsibility of the two sovereign Governments in their respective territories, a responsibility that the Governments have accepted. The Council would recall that it originally conferred on UNMEE a monitoring mandate, under Chapter VI of the Charter of the United Nations, focusing on both the Temporary Security Zone and the armed forces of the parties positioned on either side. Under the rules of engagement given to the UNMEE's peacekeepers for the implementation of this mandate, they are entitled to use force only in self-protection, and in order to save the lives of international civilians under threat. However, UNMEE is able, within its verification mandate, to monitor the parties' discharge of their security responsibilities vis-à-vis the Boundary Commission contractors working on the ground, and to intervene in extreme cases for the protection of human life. Insofar as the parties have accepted the responsibility of providing security on their territories, mandating UNMEE to do the same task would seem to open the door to conflicting interpretations on the ground.

17. By the same logic, UNMEE is fully prepared to monitor the pillar sites so that they are not tampered with after mine clearance has been completed and during the construction phase; the responsibility for ensuring security at these sites obviously remains with the parties. UNMEE is also amenable to monitor pillar sites for a limited period following the emplacement of pillars, with the full understanding on the part of all concerned that physical protection of the pillars is the sole responsibility of the parties.

18. UNMEE, in consultation with the field office of the Eritrea-Ethiopia Boundary Commission is — on a reimbursable basis — prepared to provide practical administrative and logistical support to contractors that will be engaged by the Boundary Commission to undertake pillar emplacement and "as-built" surveys. The proposed support includes such assistance as office space, storage, communications, transport (including vehicles and air support), fuel, water and medical support. UNMEE will also provide living accommodation, including kitchen facilities. These will be located in Adigrat, Barentu, and Assab, adjacent to UNMEE Force camps so as to be in the direct line of sight of Force elements, while continuing to offer direct external access to the parties, who remain responsible for security. UNMEE has appointed a liaison officer to coordinate this support and the ongoing consultations between UNMEE and the Boundary Commission field office in order to ensure its delivery in an effective and timely manner.

19. As stated in my previous report, UNMEE will also provide demining services to support demarcation within its existing authorized strength, while costs related to civilian contractors for demining quality assurance and the provision of administrative and logistical support to the field offices of the Boundary Commission will be funded from the United Nations Trust Fund for the Delimitation and Demarcation of the Border. Voluntary contributions and pledges to the Trust Fund currently total some $10.4 million. Anticipated expenditures incurred as at 28 February 2003 was about $4.4 million.

20. I would like to express my appreciation to those Member States that have responded generously to my appeal for contributions to the Fund. However, according to the report of the President of the Boundary Commission, the amount required to complete demarcation through the end of 2003 — as currently scheduled — is estimated to be about $7.6 million, which will cause a shortfall of about $1.4 million. In this respect, I would like to renew my appeal for further contributions so that the demarcation can be successfully completed as planned by the Commission without any suspension due to lack of funding.

IV. Mine action

21. Landmines and unexploded ordnance continue to constitute a major threat to the daily lives of the population of the two countries, as well as to United Nations staff and humanitarian personnel operating on the ground. From December 2002 to early February 2003, 9 civilians were killed and 34 were injured in 9 incidents involving mines and unexploded ordnance in the Temporary Security Zone and its adjacent areas. The recent spate of incidents involving newly laid anti-tank mines in Sector West is of grave concern and extraordinary precautions are being taken to increase protection for UNMEE personnel.

22. The Eritrean Demining Agency, established on 31 August 2002 with responsibility for all humanitarian demining in the country, has yet to produce a policy, plan or strategy for humanitarian mine action. This has led to the significant loss of humanitarian mine action capacity in the Temporary Security Zone and its adjacent areas, and continues to impede preparations on the ground for the return of internally displaced persons to their homes in the Zone. Since mine risk education activities in the Zone had come to a halt, UNMEE's Mine Action Coordination Centre has implemented an emergency operation to fill the gap.

23. Increasingly, the focus of UNMEE is on mine action activities associated with the demarcation of the border. In this connection, the Mission has been consulting with the parties in order to establish formal coordination and liaison procedures to facilitate freedom of movement for all elements involved in demining operations in support of demarcation. Good progress continues to be made in clearing all routes in the Temporary Security Zone of mines and unexploded ordnance, with over 2,000 kilometres of routes having been surveyed or cleared to date.

V. Humanitarian developments

24. The border areas of Ethiopia and Eritrea have been particularly hard hit by the prevailing drought in the region. In Eritrea, the impact of the drought is already evident as two thirds of the population face food and water shortages. According to humanitarian agencies, malnutrition rates in the country now range between 15 and 28 per cent, while the cost of cereals has increased by 100 per cent, and the cost of livestock has gone down by 30 per cent. The situation is worsening in the face of the rather slow pace of donor support, which now stands at about 25 per cent of the total requirement for food and only 2.5 per cent for non-food items. This slow donor response has clear implications for an already serious situation, as food supplies from the Eritrean Government and the World Food Programme (WFP) are expected to run out by April.

25. As reported by humanitarian organizations, in Ethiopia, a steady rise in malnutrition rates has been registered in areas of six of the country's most affected regions. In some pocket areas, the situation has now become critical and therapeutic feeding has been initiated. Donor response in Ethiopia has been slightly better with donors pledging about 50 per cent of the food requirement and 30 per cent of the non-food requirement.

26. In order to increase awareness of the drought situation and other humanitarian challenges in Eritrea and Ethiopia, including the return and integration of internally displaced persons and refugees, both countries sent delegations to a donor meeting in Geneva on 27 January 2003. Both delegations highlighted the plight of the most needy, especially children under five years of age, and requested additional assistance.

27. Special government coordinating bodies have been formed in Ethiopia and in Eritrea to boost the effectiveness of drought relief. Sporadic rains in both countries in December of last year have not alleviated the humanitarian emergency. Continued pledges of food and non-food relief are essential to avoid an interruption of the humanitarian pipeline during the critical months of June, July and August.

28. Quick-impact projects continue to be an important part of UNMEE's work in the Mission area and these projects, along with interventions from the two Governments, United Nations agencies and civil society organizations, have gone a long way towards re-establishing war-torn communities in the border regions. Most of the 81 UNMEE projects, funded from the assessed budget and supplemented by the Norwegian contribution to the Trust Fund to Support the Peace Process in Ethiopia and Eritrea, have been completed or are nearing completion. Additional contributions have also been received from the Governments of Ireland and the Netherlands; and from these 21 new projects have been pre-approved by the special Committee. Additional projects are under discussion with potential implementing partners. However, with both countries now facing the full impact of the drought, additional funding is badly needed to support the Trust Fund and other humanitarian interventions in Eritrea and Ethiopia.

29. UNMEE continued to elaborate policies and implement programmes aimed at curbing the spread of the HIV/AIDS scourge in the Mission area. During the month of January, a "training of trainers" course was conducted for selected UNMEE military staff. Similar courses, offered under the joint auspices of the Ethiopian Armed Forces and United Nations agencies, are being held in February and March.

VI. Human rights

30. Repatriations of civilians by both Ethiopia and Eritrea, under the auspices of the International Committee of the Red Cross (ICRC), continued to decline. During the reporting period, Ethiopia repatriated 99 persons of Eritrean origin, while Eritrea repatriated 155 persons of Ethiopian origin. According to information collected by UNMEE, persons of both nationalities continued to complain of economic hardship in the "other" country, particularly their ability to access social facilities or work as a result of discrimination on grounds of nationality. In my previous report, I expressed satisfaction with the parties' release of the last detainees who had been registered and regularly visited by the ICRC. I call upon both parties to cooperate with the ICRC to clarify and to resolve the remaining issues in accordance with the

Geneva Conventions, and with the commitments made in the Algiers Agreement of December 2000.

31. In the meantime, UNMEE's Human Rights Office continued to investigate reports of cross-border abductions of civilians, which had increased significantly in recent months. Although in most cases individuals were released after a short period, some cases remain unresolved.

VII. Public information

32. UNMEE continued to enhance its outreach efforts, including through publications in local languages, such as its monthly *UNMEE News* and its 2003 trilingual calendar, featuring the works of artists from Ethiopia and Eritrea, with accompanying texts of proverbs and quotes on peace and reconciliation. A mobile video unit is now fully operational, and a number of other informational productions are also being planned. UNMEE's four outreach centres are well-utilized, with a record 1,780 visitors over a one-month period to the Centre in Mekelle, Ethiopia. Transmissions continue of Radio UNMEE's biweekly short-wave broadcasts and weekly broadcasts on Radio Eritrea. There has been no further progress in obtaining access to the airwaves of Ethiopia free of charge.

VIII. Financial aspects

33. The General Assembly, by its resolution 56/250 B of 27 June 2002 appropriated the amount of $230,845,300 gross for the maintenance of UNMEE for the financial period from 1 July 2002 to 30 June 2003. As at 31 December 2002, unpaid assessed contributions to the special account for UNMEE amounted to $54,397,729. The total outstanding assessed contributions for all peacekeeping operations at that date amounted to $1,335,298,142.

IX. Observations

34. While further progress has been made in implementing the Algiers Agreements since my previous report, the peace process is now at a critical stage, and the international community should not be complacent. On balance, the parties have generally been cooperating well throughout this process. However, it is now time for them to translate their commitments into real action on the ground, namely, the implementation of the 13 April 2002 delimitation decision. In the execution of momentous legal decisions, political will is of paramount importance. I therefore call on the leaders of both countries to exercise the same statesmanship and flexibility that produced the Algiers Agreements and have enabled the peace process to take root thus far.

35. Recent démarches made to my Special Representative and the members of the diplomatic community in Addis Ababa, together with representations made to the Boundary Commission, as described in its report (see annex I), were forceful and could have very serious consequences. Issues which arose in the Commission should be addressed within its proper legal framework, as efforts to reopen fundamental matters already settled through binding arbitration could only be counterproductive.

It is worth noting the Commission's clear indication that if the parties wish to extend its mandate to include a power to consider the variation of the boundary, it will be prepared to act accordingly. Since its establishment, the Boundary Commission has displayed great wisdom and legal stature, and it would be absolutely imperative for the international community to continue supporting the Commission's decisions and their early implementation.

36. At the same time, concerns regarding the humanitarian consequences of demarcation must be heeded. I am confident that the international community would be ready to alleviate the hardships or disruptions that inevitably result from any demarcation exercise. The United Nations is prepared to facilitate the resolution of problems that may arise as a result of the transfer of territorial control, as provided in article 4.16 of the December 2000 Algiers Agreement. This could include, but would not be limited to, the dispatch of a needs assessment mission and the mobilization of international assistance. However, it is obvious that such support by the international community can only be provided on the basis of an accepted demarcation line.

37. In its resolution 1424 (2002), the Security Council decided to review any implications for UNMEE regarding the process of territorial transfers during demarcation, as outlined in my report of 10 July 2002. In this connection, the Boundary Commission has scheduled demarcation to be completed in November 2003. While the immediate priority is the initiation of demarcation, we must not lose sight of the fact that agreement on the timing and modalities for the transfer of territorial control should not necessarily await the completion of demarcation; the parties should come to agreement with my Special Representative on these crucial issues. In the meantime, UNMEE and the United Nations country teams in Ethiopia and Eritrea are working together to identify likely challenges resulting from transfer of territorial control, with a view to advising and assisting the parties concerning human rights, humanitarian and legal issues.

38. The parties should seize this unique opportunity to consolidate the peace between them. I urge them to honour their commitments and cooperate fully with the international community, which has displayed commendable unity, generosity and determination to assist them. In this connection, it is expected that Ethiopia and Eritrea provide freedom of movement in the border areas for UNMEE demining elements involved in route clearance and demining tasks for demarcation. Furthermore, the Eritrean authorities are urged to take measures to recommence their humanitarian mine action operations in the Temporary Security Zone as soon as possible, in order to facilitate the early return of internally displaced persons and refugees to their homes. In the same vein, the Eritrean Government would be expected to conclude the status-of-forces agreement with the United Nations without further delay.

39. While the two parties should be commended for the fact that there have been no serious ceasefire violations since the establishment of the Temporary Security Zone, the recent cross-border incidents are a source of concern. I urge the parties to do their utmost to prevent a recurrence of such incidents. In this regard, it is particularly important that they begin to sensitize their populations about the demarcation process and its implications. Meanwhile, UNMEE will continue to monitor the situation in the Zone and adjacent areas closely, and is prepared to assist the parties with any measures that are aimed at building confidence and contributing

to the long-term normalization of relations between the two neighbouring countries. Having the above considerations in mind, I recommend that the mandate of UNMEE be extended for six months, until 15 September 2003.

40. In the period ahead, the parties, as well as the Boundary Commission, will continue to rely on the political and material support of the international community. Despite the significant contributions received so far, the Trust Fund for the Delimitation and Demarcation of the Border will not be sufficient to cover the total cost of demarcation. I would therefore like to renew my appeal to the donor community to contribute generously to the trust funds and other mechanisms, in order to facilitate the conclusion of the demarcation process as currently scheduled. In the same vein, the serious drought affecting the two countries requires immediate attention and international support.

41. In conclusion, I wish to express my gratitude to my Special Representative, Legwaila Joseph Legwaila, and the military and civilian personnel of UNMEE for their tireless efforts to keep the peace process on a steady course. I am also grateful to the staff of the United Nations country teams and other humanitarian workers for their work on the ground to assist people in need, and for their good cooperation with UNMEE. I would also like to express my respect for and appreciation to the Boundary Commission and its President for their work in fulfilling a difficult task and preparing for the demarcation of the border. The period ahead will pose major challenges, but I am convinced that with the full cooperation of the parties and the continued and invaluable support of the African Union and interested Member States, including troop-contributing countries, the peace process will continue to move forward.

Annex I

Eighth report of the Eritrea-Ethiopia Boundary Commission

This is the eighth report of the Eritrea-Ethiopia Boundary Commission, covering the period from 1 December 2002 to 21 February 2003. There have been developments which are a cause of concern to the Commission and which it is obliged to bring to the attention of the Security Council without further delay. These are dealt with in the first three parts of the present report. Part Four deals with other matters arising in connection with the Commission's work. Part Five summarizes the action that the Commission hopes that the Council will feel able to take to assist in advancing the work of the Commission.

Part One

1. It will be recalled that the Commission rendered its Decision on Delimitation ("the April Decision") on 13 April 2002 and that the Commission's mandate required it then to proceed to the demarcation of the border. The continuation of the Commission's work was dependent upon the completion of the 1:25,000 scale map on which the border would then be marked, together with an indication of turning points therein. Until that stage was completed, it would not be possible to proceed to the physical construction of the boundary markers.

2. The completion of the map required, even after 13 April 2002, a considerable amount of surveying, most of it in territory under Ethiopian control. Ethiopian consent was therefore necessary to provide the surveyors with access by helicopter to the relevant points. This was normally given in sufficient time to enable the surveying schedule to be maintained. The survey material required for the preparation of the map was sent to the company actually making the map with only a slight delay. It was expected that the maps would be dispatched to the parties by 17 December 2002 so that they might be able to comment on them by the stipulated date of 17 January 2003. Unfortunately, due to a delay in the courier service, the maps did not reach the parties until 24 December 2002. According to the agreed schedule as amended, the comments of the parties on the map were due to — and did — reach the Commission on 24 January 2003.

3. The Commission had indicated that these comments were to be of an essentially technical nature. Those filed by Eritrea, amounting to some 17 pages, were of this character. The comments filed by Ethiopia were mostly of a quite different character and size. Amounting to 141 pages and going far beyond the scope of comments on the map, they contained instead a detailed exposition of the views of Ethiopia regarding the steps that it deemed necessary for the satisfactory completion of the demarcation. In a number of significant respects the comments amounted to an attempt to reopen the substance of the April Decision, notwithstanding Ethiopia's repeated statements, made both before and since, of its acceptance of the Decision.

4. The main thrust of the Ethiopian comments is that the boundary should be varied so as to take better account of human and physical geography. They are similar to those advanced by Ethiopia in discussions with the Commission in the

period since the April Decision. The Commission has always made it clear that it has not been given the power to vary the boundary delimited in the April Decision. In particular, the December 2000 Agreement expressly precluded the Commission from deciding matters *ex aequo et bono*: it did not confer on the Commission, as it could have done and as has been done in the demarcation arrangements for many other boundaries, the power to vary the boundary in the process of demarcation for the purpose of meeting local human needs. Absent such authority, the hands of the Commission are in large measure tied. The Commission regrets that the boundary lines found by it to follow from the Treaty provisions and international law which it is bound to apply may at certain points result in physical divisions within communities that may adversely affect the interests of the local inhabitants. The Commission has not been insensitive to certain likely problems; it expressly contemplated the possibility of variations to the line, but only at the request of and with the agreement of both parties. While the parties have not reached such agreement, nothing would preclude their doing so in the course of the demarcation, even on a location-by-location basis. In the absence of agreement, however, the Commission's ability to ameliorate — on its own initiative — any problems that might arise is limited to minor clarifications justified principally by the enlargement of the scale of the maps with which it is working.

5. Notwithstanding the clarity with which the Commission has stated the limits upon its authority, Ethiopia has continued to seek variations to the boundary line delimited in the April Decision, and has done so in terms that appear, despite protestations to the contrary, to undermine not only the April Decision but also the peace process as a whole. Thus, Ethiopia's comments contained the following passage:

> "Ethiopia has understood that this line would be subject to refinement during the demarcation process when the effective administration of the Parties could be determined in the field. *It was on this basis that the Government accepted the April Decision and it is on this basis only that the Government continues to do so.*" [§ 1.5]

6. The Commission sees in the words italicized above an intimation that Ethiopia will not adhere to the April Decision if its claim to "refinement" of the April Decision delimitation is not accepted. The Commission's disquiet on this point has been increased by statements made on behalf of Ethiopia at the meeting on 9 February 2003.

7. In seeking to support its position in this way and to require the demarcation to depart from the delimitation line, Ethiopia is relying principally upon certain specific indications given by the Commission in its April Decision of the need to complete its findings on the basis of further information to be gathered on the ground in the course of demarcation. But the Commission's identification of these specific locations where the delimitation line still needed to be completed could not amount to a reservation of a general power to adjust the delimitation line wherever it might cut across a community. It may be regrettable, but it is by no means unusual, for boundary delimitation and subsequent demarcation to divide communities. This may require some movement of communities, some reconstruction of community facilities and some understanding between the parties regarding cross-boundary movement. But those are not matters to be remedied by the Commission. Rather

they are a concern of the United Nations, as is expressly laid down in Article 4.16 of the December 2000 Agreement:

> "Recognizing that the results of the delimitation and demarcation process are not yet known, the parties request the United Nations to facilitate resolution of problems which may arise due to the transfer of territorial control, including the consequences for individuals residing in previously disputed territory."

8. While the Commission deems it necessary to bring the present situation to the attention of the Security Council, the Commission wishes to make it clear that if the parties wish to extend its mandate to include a power to consider the variation of the boundary, it will be prepared to act accordingly.

Part Two

9. On 28 January 2003, the Commission received from Ethiopia a complaint that Eritrea had been using the Commission's field work as a cover for an Eritrean military intelligence-collection operation. No specific details of this operation were given, beyond linking it, though not explicitly, to the currently active field liaison officers appointed by Eritrea who are, according to Ethiopia, intelligence officers in the Eritrean Army. The Ethiopian letter stated that "neither will be allowed by Ethiopia to enter Ethiopian territory henceforth". The Ethiopian letter further requested the Commission

> "to ensure that proper security procedures are taken to protect sensitive materials from other intelligence operations which are likely being directed at the field staff and its offices by Eritrea".

10. The Ethiopian letter concluded by stating that the Ethiopian Government is prepared to allow field work to continue but only on the basis that Eritrea nominate new field liaison officers, whose nominations Ethiopia "will consider ... as expeditiously as possible". In the meanwhile, any field work that continues must be observed by Ethiopia's field liaison officers "as provided for by the Demarcation Directions". Since the Demarcation Directions do not contemplate that field work can continue in the absence of field liaison officers of one party unless it is that party that is responsible for the non-appearance of its own nominees, it is evident that the Ethiopian letter amounts to a prohibition of further field work pending the replacement by Eritrea of its field liaison officers by others acceptable to Ethiopia.

11. On 6 February 2003, Eritrea commented on the Ethiopian letter, observing that the military character of the field liaison officers nominated by Eritrea had long been known to Ethiopia since they had appeared regularly in the joint Military Coordination Commission. Eritrea argued that by refusing to allow the Eritrean field liaison officers to attend the proceedings, Ethiopia was violating the Demarcation Directions and had forfeited the right to send its own field liaison officers to accompany the demarcation technical staff.

12. The Commission held a meeting with the parties in London on 8 and 9 February 2003, in the course of which Ethiopia stated that the Ethiopian Foreign Ministry, which was responsible for the handling of demarcation matters, did not know who had been representing Eritrea in the Military Coordination Commission, which was a matter for the Ethiopian Defence Ministry.

13. Having heard the parties, the Commission made an Order observing that the statements of the parties evidenced disagreements which shall be referred for decision in accordance with paragraph 15B of the Demarcation Directions. Pending the decision of the Commission on these disagreements, each party was required forthwith to appoint two ad hoc field liaison officers to act in all sectors in the capacity of the field liaison officers earlier nominated by each party. In order to ensure continuation of the next phase of the demarcation work, the Commission ordered field work to continue in accordance with the Commission's "Schedule of the Order of Activities Ahead", as updated from time to time, of which a current copy is appended. This means that necessary field work should continue in the Western and Central Sectors, as well as beginning in the Eastern Sector. Actual pillar emplacement will begin in the Eastern Sector. The Demarcation Directions will be amended accordingly.

14. Having read the Order, the Ethiopian representative stated that

> "it would seem to be inconsistent with Foreign Minister's letter [of 28 January 2003] to the Commission".

In response, the President of the Commission stated that the remarks made on behalf of Ethiopia did not affect the validity or binding quality of the Order. The Commission takes the view that it is not open to one party unilaterally to control the work of the Commission.

15. As of the date of preparation of the present report, Eritrea has within the prescribed time limit nominated its two ad hoc field liaison officers. Ethiopia has not. The Commission hopes that this will soon be done.

Part Three

16. *The Commission's Order of 17 July 2002.* In relation to the Commission's Order of 17 July 2002 requiring Ethiopia to withdraw those Ethiopian nationals from Dembe Mengul who had returned there after 13 April with Ethiopian Government support, the Commission, on 7 November 2002, made the following determinations:

> "The Commission, having considered the views of the parties, now determines as follows:
>
> 1. The jurisdiction and powers of the Commission extend to its taking cognizance of, and where necessary making appropriate decisions on, any matter it finds necessary for the performance of its mandate to delimit and demarcate the boundary;
>
> 2. The Commission is accordingly entitled to take cognizance of any population movement across the boundary as determined in the Delimitation Decision and to make such orders as it finds necessary in relation to any such population movements, insofar as such movement may affect the process and implementation of demarcation;
>
> 3. Having regard to the Commission's Order of 17 July 2002, Ethiopia, in failing to remove from Eritrean territory persons of Ethiopian origin who have moved into that territory subsequent to the date of the Delimitation Decision, has not complied with its obligations;

4. Any decision by the Commission to inspect, whether by land or air, any location in the boundary area, and in particular Tserona and Zalambessa or their environs in implementation of paragraph 8.1.B iv and vi of the Delimitation Decision, is a decision foreseen in operative paragraph 1 above, and must be complied with."

As at the date of the present report, Ethiopia has still not implemented the Commission's Order of 17 July 2002.

Part Four

17. *The preparation of the 1:25,000 scale map.* The basic map has now been completed and it remains only for the line as delimited in the April Decision to be completed in the respects therein contemplated and then to be marked on the map.

18. *Marking of pillar sites.* Subject to the finalization of the delimitation in the locations through field assessment specifically foreseen in the April Decision, the Commission is now ready to mark the sites of the boundary pillars on the 1:25,000 scale map.

19. *Arrangements relating to pillar construction.* The Commission has been in touch with various companies in regard to the construction of the boundary pillars. All potential contractors have visited the area to assess the situation before deciding whether to tender for the work. In connection with these visits, some difficulty has been experienced in obtaining from Ethiopia all the authorizations needed for the related helicopter flights.

20. A second problem in this connection relates to the provision of accommodation and meal arrangements for the contractors when they begin work. It was originally hoped that safe accommodation and suitable catering arrangements could be provided within the perimeter of the UNMEE establishments at Adigrat, Barentu and Assab. It now appears that UNMEE does not consider that it is authorized to provide these services. The contractors would, therefore, have to be accommodated in tents or containers outside the UNMEE perimeters in these places. This creates problems regarding both the protection of the contractors and the provision of meals. These can only be solved by incurring significantly greater expenditure in the construction of accommodation, the provision of fencing and the hiring of private security personnel to protect the accommodation, as well as the construction of catering facilities and the hiring of required staff. Also, the need to lease appropriate sites for accommodation from local owners or the local government is likely to lead to further delay.

21. A further problem relates to the security of all Eritrea-Ethiopia Boundary Commission personnel in the field — both the field office staff and, in due course, the construction personnel. It has become evident that in certain locations they may be confronted by the hostility of local inhabitants due, for example, to the fact that the boundary line may be perceived as dividing communities or separating them from their cultivated fields. UNMEE takes the view that it is not authorized to protect Boundary Commission personnel against any assault, but that this is a matter for the party in control of the field location. The Commission is pleased to record that in response to the Commission's specific request, both parties have assured the Commission that they each will provide fully adequate security in this respect. Nevertheless, since the parties are subject to restrictions on the introduction of their military personnel into the Temporary Security Zone, the Commission feels that it

would be desirable that UNMEE should be present to support the protection to be provided by the parties. It hardly needs saying that any assault on Boundary Commission personnel would likely lead to an immediate withdrawal of such personnel, the cessation of the demarcation process and the consequent frustration of the whole boundary demarcation process. The Commission therefore hopes that consideration can be given to the possible enlargement of UNMEE's authority so that its forces may accompany all Eritrea-Ethiopia Boundary Commission personnel and thereby deter or react to any threat to their security.

22. Associated with this is the need to protect the concrete bases of each pillar for at least one week after concrete has been poured and while it is setting hard. Again, the presence of UNMEE forces at each site for that limited period would ensure that the concrete bases are not disturbed.

23. *Mine clearance and maintenance of cleared areas.* The Commission notes with appreciation the essential mine clearance activity of UNMEE and stresses the importance of the unimpeded continuation of that work. It is concerned by reports that some areas have been remined. It relies upon UNMEE to ensure the maintenance of cleared areas and hopes that the mandate of UNMEE enables it to do this.

Part Five

24. In sum, the Commission expresses the hope that the Security Council will:

(a) Confirm that, while the parties themselves may jointly agree to vary the boundary and while the Commission in demarcating the boundary may consider minor adjustments justified principally by the subsequent enlargement of the scale of the maps in the light of which the April Decision was rendered, it is neither the responsibility of the Commission, nor within its authority, to vary the delimitation line to meet local needs asserted by Ethiopia. Rather it is for the United Nations to deal with the consequences of any aspect of the demarcation that involves transfer of territory or the division of communities — though the Commission is willing to assist in the process of boundary variation if the parties and the United Nations so wish;

(b) Call upon the parties to cooperate promptly and fully with the Commission to enable it to fulfil the mandate conferred upon it by the parties of *expeditiously* delimiting and demarcating the boundary;

(c) Clarify the mandate of UNMEE so as to permit accommodation of contractors' personnel within UNMEE encampments where needed, together with access to meal facilities; and

(d) Authorize and arrange for provision of security by UNMEE to all Eritrea-Ethiopia Boundary Commission personnel in the field and for the protection of pillar sites after mine clearance and during the construction phase, with authority to use such force as may be necessary for this purpose.

(*Signed*) Sir Elihu **Lauterpacht**
President of the Commission

21 February 2003

Appendix

Schedule of the order of activities ahead as at 23 February 2003

24 February 2003

1. Draft specifications for pillar emplacement and as-built survey delivered to the parties for comments.
2. Commence interim factual survey of 3 towns and interim field assessment of pillar locations at turning points, intermediate positions and rivers in all sectors.

27 February 2003

3. Receipt of Parties' comments on draft specifications.

3 March 2003

4. Final Requests For Proposals delivered to potential contractors who visited the sites in January 2003.

17 March 2003

5. Delivery of interim factual report on the 3 towns.

   (Subject to all approvals for flights and site inspections being promptly approved by the parties).

20 and 21 March 2003

6. Eritrea-Ethiopia Boundary Commission meeting for further consideration of 24 January 2003 comments from parties.

31 March 2003

7. Proposals due from potential contractors.
8. Completion of interim field assessment of pillar locations, of rivers and all sectors and delivery of interim field assessment report to the parties.

   (Subject to all approvals for flights and site inspections being promptly approved by the parties).

1 April 2003

9. Receipt of parties' comments on interim factual report on the 3 towns.

   (Demarcation Directions para. 14E).

15 April 2003

10. Receipt of parties' comments on interim field assessment report of pillar locations.

    (Provision agreed after meeting with Parties in London in November 2002).

Late April 2003

11. Contractors selected.

Late April 2003

12. Liaison Meeting with Ethiopia.

13. Liaison Meeting with Eritrea.

14. Eritrea-Ethiopia Boundary Commission decides boundary line and pillar sites.

Mid-May 2003

15. Complete negotiations and signing of contracts.

    (Subject to the procurement process meeting this timeline).

16. Production of marked maps in digital form by the Secretary and delivery to parties.

Late May 2003

17. Demining of pillar sites access commences.

Early June 2003

18. Receipt of parties' comments on marked maps.

    (Demarcation Directions, para. 9C).

19. Liaison Meeting with Ethiopia.

20. Liaison Meeting with Eritrea.

Mid-June 2003

21. Eritrea-Ethiopia Boundary Commission meeting to confirm final boundary line and pillar sites.

Early July 2003

22. Pillar emplacement and as-built survey begins in Eastern Sector.

    (Subject to demining proceeding as planned, the availability of materials for the construction of boundary markers and witness marks, contractor accommodation and operational facilities being established, the parties approval of visa, taxation, custom, etc., in terms of the time line and contractors being able to completely deploy to the site within 8 weeks).

Early August 2003

23. Completion of pillar emplacement and as-built survey of Eastern Sector.

Early September 2003

24. Eritrea-Ethiopia Boundary Commission issues the parties the final map of the Eastern Sector with a copy of the relevant pages of the register recording the final location of each pillar.

25. Completion of pillar emplacement and as-built survey in Central or Western Sector, depending upon which sector the Commission takes first.

    (Subject to no significant delay during the wet season).

Early October 2003

26. Completion of pillar emplacement and as-built survey of remaining sector.

    (Subject to no significant delay during the wet season).

27. Eritrea-Ethiopia Boundary Commission issues the parties the final map of the Central or Western Sector (depending upon which sector the Commission takes first) with a copy of the relevant pages of the register recording the final location of each pillar.

Early November 2003

28. Eritrea-Ethiopia Boundary Commission issues the parties the final map of remaining sector with a copy of the relevant pages of the register recording the final location of each pillar.

Annex II

United Nations Mission in Ethiopia and Eritrea: contributions as at 26 February 2003

Country	*Military observers*	*Staff*	*Troops*	*Total*	*National support elements*
Algeria	8	-	-	8	-
Australia	-	2	-	2	-
Austria	2	-	-	2	-
Bangladesh	7	4	167	178	-
Benin	-	3	-	3	-
Bosnia and Herzegovina	8	-	-	8	-
Bulgaria	9	2	-	11	-
Canada	6	-	-	6	-
China	5	-	-	5	-
Croatia	5	-	-	5	-
Czech Republic	2	-	-	2	-
Denmark	4	-	-	4	-
Finland	7	2	-	9	-
France	-	1	-	1	-
Gambia	4	2	-	6	-
Ghana	9	5	-	14	-
Greece	3	-	-	3	-
India	5	20	1 522	1 547	-
Iran (Islamic Republic of)	2	-	-	2	-
Ireland	-	10	208	218	7
Italy	4	3	50	57	10
Jordan	6	16	941	963	-
Kenya	11	13	642	666	-
Malaysia	7	5	-	12	-
Namibia	3	2	-	5	-
Nepal	4	-	-	4	-
Netherlands	-	-	-		-
Nigeria	6	4	-	10	-
Norway	5	-	-	5	-
Paraguay	2	-	-	2	-
Peru	2	-	-	2	-
Poland	6	-	-	6	-
Romania	8	-	-	8	-
Russian Federation	5	-	-	5	-
Singapore	1	-	-	1	-

Country	*Military observers*	*Staff*	*Troops*	*Total*	*National support elements*
Slovakia	-	3	195	198	-
South Africa	4	2	-	6	-
Spain	3	2	-	5	-
Sweden	6	-	-	6	-
Switzerland	4	-	-	4	-
Tunisia	2	3	-	5	-
Ukraine	7	-	-	7	-
United Kingdom of Great Britain and Northern Ireland	1	2	-	3	-
United Republic of Tanzania	8	3	-	11	-
United States of America	6	1	-	7	-
Uruguay	5	3	28	36	-
Zambia	10	4	-	14	-
Total	**212**	**117**	**3 753**	**4 082**	**17**

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Addendum

Observations of the Eritrea-Ethiopia Boundary Commission

Introduction

1. At the time of issuing to the demarcation team its first set of Demarcation Instructions, the Commission considers it opportune to offer the Parties certain Observations on the Commission's approach to the demarcation phase of its work in the light in particular of certain considerations advanced by the Parties in their comments of 24 January 2003. In doing so the Commission is mindful of the fact that it is not the practice of international tribunals to respond to comments upon, or criticisms of, their decisions. However, the unusual features of the present situation, in which the Boundary Commission is required to continue its work by demarcating the boundary but without provision for formal pleadings by the Parties or full oral hearings, make it desirable that the Commission's work in this respect be more fully explained. This will, the Commission believes, also be helpful in avoiding certain misunderstandings regarding the content and effect of the Commission's Delimitation Decision of 13 April 2002 ("Delimitation Decision") and regarding its tasks during the demarcation process.

2. In the Delimitation Decision, the Commission delimited the colonial treaty border between Eritrea and Ethiopia as prescribed by the mandate given to it by the Parties, namely, in accordance with the pertinent colonial treaties and applicable international law. Under the December 2000 Agreement "[t]he parties agree that the delimitation ... determination [. . .] of the Commission shall be final and binding." Both Parties have affirmed their acceptance of the Delimitation Decision.

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The Demarcation Phase

3. The Commission has now turned to the second phase of its work, the demarcation of the boundary. Since, as the Parties have expressly agreed, the Commission's Delimitation determination is "final", the demarcation has to be the demarcation on the ground *of the boundary as delimited in the Delimitation Decision*, not a variation of that boundary or the elaboration of some new boundary. This conclusion is reflected in paragraph 14A of the Commission's Demarcation Directions of 8 July 2002, which reads as follows:

> "Division of towns and villages
>
> A. The Commission has no authority to vary the boundary line. If it runs through and divides a town or village, the line may be varied only on the basis of an express request agreed between and made by both Parties."

Although Ethiopia had, in its written comments on the draft of this provision, expressed the hope that it could be made more flexible so that demarcations could be more practical and mitigate hardships, the Commission felt unable to accede to that suggestion, given both the finality which the Parties were agreed was attached to its Delimitation Decision and the role given by the Parties to the United Nations in facilitating the resolution of such problems.

4. The position as set out in paragraph 14A thus follows from the mandate given to the Commission by the Parties in the December 2000 Agreement. The Commission cannot by its own actions expand the authority conferred upon it. If, however, the Parties were to agree that the Commission's authority should be expanded, they would be free to do so.

Flexibility in demarcation

5. At this point the Commission must address the question of the flexibility which is said to inhere in a demarcation process and which, it is suggested, enables the Commission to depart from the strict application of the boundary line which it prescribed in order to take into account the human and physical geography of certain areas better known now than at the time the Delimitation Decision was handed down.

6. The Commission is, as already noted, constrained by the terms of the December 2000 Agreement. The Commission is unable to read into that treaty language, either taken by itself or read in the light of the context provided by other associated agreements concluded between the Parties, any authority for it to add to or substract from the terms of the colonial treaties or to include within the applicable international law elements of flexibility which it does not already contain.

7. In this latter respect the Commission notes that there is a practice whereby demarcators may be given some latitude, on various grounds, in demarcating the line which has been delimited by some arbitral or judicial award or by a boundary treaty. But the Commission notes that this is a practice which is normally based on the agreement of the parties concerned, as expressed in some relevant instrument. Moreover, that practice often involves the demarcation of a boundary by joint demarcation teams composed of representatives of the two States concerned, who can thus act for their States in agreeing to such flexibility as the demarcation team may think appropriate in the course of its work. The Commission is not of the view that there is to be derived from that practice a settled rule of customary international law to the effect that demarcators not so expressly empowered nonetheless possess such power.

8. Hence, consistent with the Parties' prescription that the delimitation be final, the scope for any clarification of or deviation from the boundary which the Boundary Commission has laid down is very limited. In the Commission's view a demarcator must demarcate the boundary as it has been laid down in the delimitation instrument, but with a limited margin of appreciation enabling it to take account of any flexibility in the terms of the delimitation itself or of the scale and accuracy of maps used in the delimitation process, and to avoid establishing a boundary which is manifestly impracticable.

9. In the present case this conclusion is the more compelling in the light of three considerations in particular to which the Parties had agreed in advance:

(a) first, they knew in advance, and agreed, that the result of the Commission's delimitation of the boundary might not be identical with previous areas of territorial administration and might follow a course which resulted in populations ending up on the "wrong" side of the boundary, and that where such a situation arose the ensuing problems were for resolution by the UN rather than by the Commission (Article 4.16 of the December 2000 Agreement);

(b) second, the Parties knew in advance, and agreed, that it was not open to the Commission to make its decisions on the basis of *ex aequo et bono* considerations (Article 4.2);

(c) third, the Parties knew in advance, and agreed, that the boundary as delimited by the Commission's Delimitation Decision would be final (Article 4.15), i.e., not subject to

amendment, including therefore amendment during the process devoted to and limited to demarcation of the boundary delimited.

Flexibility Within the Terms of the Delimitation Decision

10. In respect of certain matters – Tserona, Zalambessa, Bure, the Eastern Sector as a whole, rivers, the recalculation of coordinates, and the eventual need to replace the Commission's "illustrative" map with a final and definitive map – the Commission envisaged that further work was required but it specified in its Delimitation Decision what that work would entail. It would be wrong to read into those exact references some readiness or authority on the part of the Commission to go beyond the limits set, let alone to look again at other sections of the boundary in the light of such further representations as might be made to it.

(a) The recalculation of coordinates

11. This is particularly the case with the Commission's specification in the Delimitation Decision of the coordinates of the points between which the boundary was to run. The Commission explained that this particular specification was used because of the limited availability at that stage of information on the maps before the Commission. The Commission therefore added that "[a]ll coordinates will be recalculated and made more precise during the demarcation as the Commission acquires the additional necessary information." As is evident from the words used and from their context the recalculation of the coordinates was to be solely for the purpose of ensuring, on the basis of aerial photography, which the Commission had previously been precluded from initiating, that the coordinates of the locations listed in the Decision were accurate. Nothing in the language used could reasonably be read as suggesting that the Commission intended that the locations themselves would be varied during the demarcation. It was to be a technical exercise not involving any substantive alteration in the boundary. Nothing was said in the Decision to suggest that the line was provisional other than in relation to the locations specifically identified in paragraph 10 above.

12. The Commission is therefore obliged to reject the assertion that it must adjust the coordinates to take into account the human and physical geography in the border region. Moreover, the

Commission firmly rejects the contention that if such adjustments are not made the Commission's work would be devoid of adequate legal basis.

(b) The Parties' subsequent conduct

13. Similarly, the fact that the Commission, in its Delimitation Decision, made an assessment of the effect of subsequent conduct on the boundaries established by the three colonial treaties cannot be read as enabling the Commission now to reopen the Delimitation Decision. In considering such conduct, the Commission relied on the evidence placed before it by the Parties during the written and oral pleadings before the Commission, and concluded that in some respects a departure from the treaty boundary was called for while in others it was not. The Commission's readiness to consider in that way the Parties' subsequent conduct was not intended to mean, and cannot be taken to mean, that the Commission would now be receptive to additional evidence of that conduct or would itself seek to gather it. To do so would mean that the boundary determined by the Commission would have been subject to further variation and would thus have been indeterminate. It would also be inconsistent with the stipulation in the December 2000 Agreement that the Commission's Delimitation Decision is "final." The boundary laid down in the Delimitation Decision reflects the Commission's assessment of the evidence of conduct presented by the Parties. The boundary line drawn, for example, in the area of the so-called Belesa and Endeli Projections is not a provisional line subject to further consideration by the Commission of new evidence of State practice in those areas. There is, in short, no further room for the introduction by the Parties of additional new evidence of their conduct, or for the Commission to seek out such evidence.

The Three Boundary Sectors

14. As the Commission indicated in its Delimitation Decision, its approach to the task of delimiting the boundary between Eritrea and Ethiopia was dictated by the December 2000 Agreement, in which the Parties stipulated that the Commission's mandate was to determine the boundary on the basis of the three Treaties and applicable international law. Accordingly, the Commission dealt with the boundary in three sectors corresponding to the three Treaties. As they were not identical in content, the interpretation and application of each by the Commission required different approaches in each of the sectors to which they related.

(a) The Western Sector

15. The boundary in the Western Sector, governed by the 1902 Treaty, was never completely laid down prior to the dispute between the Parties. It was, therefore, a principal task of the Commission to complete the delimitation of that boundary.

16. The Commission concluded that the boundary in the uncompleted section had crystallized by 1935 so as to follow a straight line between Points 6 and 9 as depicted on the map accompanying its Delimitation Decision. That straight line had been represented on many maps, including maps published by Ethiopia as well as Eritrea.

17. The Commission also examined developments after 1935, and concluded that it could "perceive nothing in that chain of developments that has had the effect of altering the boundary between the Parties" (para 5.91). The Commission observes that its finding that the boundary under the 1902 Treaty had by 1935 crystallized along the line of the traditional signature means that the burden rested upon Ethiopia to substantiate any claimed departure from that line on the basis of conduct that would serve to show that Badme village (which lies close to the line) was subject to Ethiopian control. The Commission referred specifically in the Delimitation Decision (paras 5.92-5.95) to the evidence produced by Ethiopia. It noted in particular that Ethiopia had introduced no evidence in its opening pleading (its Memorial) of governmental activities west of that straight line; although it produced some evidence in its Counter Memorial, it did not add to or develop this in its Reply. Moreover, maps submitted by Ethiopia were inconsistent as to the location of Badme village. Overall, the evidence was nothing like what might have been expected had Ethiopia's presence there in the period before the case been as significant as Ethiopia now alleges. The Commission would note that what is relevant here is governmental and not private activity. The references to Ethiopian governmental control of Badme and its environs were insufficient to persuade the Commission that an Ethiopian presence west of the line from Points 6 to 9 would support a departure from the line that had crystallized by 1935.

18. This conclusion followed from the inadequacy of Ethiopia's evidence. Since Badme village (as opposed to some other parts of the Badme region) lay on what was found to be the Eritrean side of the treaty line, there was no need for the Commission to consider any evidence of Eritrean

governmental presence there, although Eritrea did in fact submit such evidence. Moreover, even some maps submitted by Ethiopia not only showed the distinctive straight line between the Setit and Mareb Rivers, but also marked Badme village as being on the Eritrean side of that line. The Commission must also observe that the Ethiopian invocation of the findings of the OAU in respect of Badme in 1998 (Comment, para. 1.4, footnote 4) failed to mention the OAU's express statement that those findings did not "prejudge the final status of that area which will be determined at the end of the delimitation and demarcation process and, if necessary, through arbitration."

(b) The Central Sector

19. In the Central Sector the boundary was decided by reference, in the first place, to the Treaty of 1900. The subsequent conduct of the Parties was then examined with a view to determining whether any such conduct required the Commission to depart from the Treaty line as so determined. The Commission found that on the evidence placed before it such departure was required at a number of locations which were clearly described. However, at two points determination was left to be made more precise later, namely, at Tserona and Zalambessa. The Delimitation Decision contained no indication that the demarcation would involve any change or completion of the boundary at any other locations.

20. Nonetheless, in the light of further work done in the exercise of its demarcation function, the Commission has identified two areas in the Central Sector where a strict application of the line as delimited in its Delimitation Decision would be manifestly impracticable, namely, certain plateau lands in the vicinity of Point 18 on the boundary, and the area of the delta-like formation where the Ragali River flows into the Salt Lake. Demarcation instructions relating to these areas will be issued later.

21. In addition, the Commission is aware that there may be technical demarcation issues in part of the stretch between Points 17 and 18, where the boundary runs along what it referred to in the Delimitation Decision simply as the "Eritrean claim line." These issues will be addressed in future instructions to the demarcation team.

22. In two additional respects the Commission's delimitation of the boundary in the Central Sector may call for some clarification.

23. Although it now appears that the Commission may have been provided with insufficient information concerning the precise location of Fort Cadorna, this does not affect the delimitation of the boundary in the region that the Commission has identified as "Acran", that is, the area in the southern part of the Belesa Projection defined by the Commission as extending over the relevant part of the boundary line joining Points 14-18. The Commission found that the evidence of Eritrean activity was "sufficient . . . to justify treating the Acran region as part of Eritrea." That conclusion is not brought into question by the possible misplacement of Fort Cadorna, and accordingly there is no reason for the Commission to vary the boundary in the southern section of the Belesa Projection as delimited by it.

24. The other respect in which the Delimitation Decision calls for some clarification concerns the course of the boundary between Points 20 and 21, immediately to the southeast of Zalambessa. In that area there is a discrepancy between, on the one hand, the Commission's reasoning (at para. 4.42) and, on the other hand, its summary of the Treaty boundary (para. 4.59(6) and (7)) and the operative part of the Commission's *dispositif*, as shown on Map 11 of the Delimitation Decision. It is accepted as a matter of international law that it is the *dispositif* which is operative and binding, and which prevails if there is any discrepancy between it and the body of a tribunal's award.

25. There is a further issue in that the Commission, based upon map evidence submitted by both Parties, placed Point 20 at the source of a headwater stream of the Muna/Berbera Gado. From the aerial photo survey that the Commission was only recently permitted to conduct, it is apparent that that map evidence was inaccurate. There may therefore be some uncertainty regarding the boundary line around Zalambessa and the commencement of the line passing down the Muna until it meets the Enda Dashim at Point 21. The Commission will give the demarcation team appropriate instructions in due course.

(c) the Eastern Sector

26. The boundary in the Eastern Sector was governed by a third Treaty, that of 1908, which used the formula that the boundary should proceed parallel to the coast and at a distance of 60 kilometres from it, adding that the two Governments would fix the line on the ground by common accord, "adapting it to the nature and variation of the terrain." The Commission accordingly sought the views of the Parties as to what adaptations might be called for in accordance with that provision. In their comments of 24 January 2003, both Parties gave their views on this matter. The Commission has carefully considered those views, and has reached conclusions which it has embodied in the demarcation instructions which it has today given to the demarcation team.

Rivers and islands

27. The Commission also acknowledged in its Delimitation Decision that there could be certain practical difficulties in the demarcation of the boundary in those stretches where it follows the course of a river. It therefore asked both Parties for their views on these questions, which the Parties duly gave in their comments of 24 January 2003. The Commission is considering those views.

Concluding observations

28. It is inherent in any boundary delimitation that it may give rise to anomalies on the ground. This was expressly anticipated and accepted by the Parties in their December 2000 Agreement, and by the Commission in its Demarcation Directions of July 2002. This is essentially a matter for the Parties to deal with by agreement between themselves, or by agreeing to empower the Commission to vary the boundary, or by turning to the United Nations as contemplated in Article 4.16 of the December 2000 Agreement.

29. In its consideration of the comments of the Parties, the Commission must maintain its impartial approach to all matters with which it has to deal. It cannot allow one Party to claim for itself the right to insist on adjustment of parts of the boundary which that Party finds disadvantageous.

The Commission continues to owe a duty to both Parties to perform the functions placed upon it by their agreement and it is its intention to perform these functions fully and faithfully.

30. The next steps to be taken are clear: the Commission's surveyors must be allowed to continue, without hindrance, to establish the locations of the marker pillars and the contractors must be allowed to construct the pillars. The Parties must cooperate with the Commission in ensuring that the Commission be enabled to complete its work as set out in the Schedule of Operations. The Commission's personnel must be fully safeguarded in their operations. While the Commission notes with appreciation the firm undertakings that both Parties have given in this connection, it still remains for the Parties to discuss with the Chief Surveyor at an early date the details of the manner in which they propose to fulfill these undertakings.

London, 21 March 2003
Signed by the Commission:

(*Signed*) Sir Elihu **Lauterpacht**
President

(*Signed*) Prince **Bola Adesumbo Ajibola**

(*Signed*) W. Michael **Reisman**

(*Signed*) Judge Stephen M. **Schwebel**

(*Signed*) Sir Arthur **Watts**

(*Signed*) Dr. Hiroshi **Murakami**
Secretary

(*Signed*) Bette E. **Shifman**
Registrar

United Nations S/2003/258

Security Council

Distr.: General
6 March 2003

Original: English

Letter dated 3 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 September 2002 (S/2002/991).

The Counter-Terrorism Committee has received the attached supplementary report from Guinea submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

03-27331 (E) 130303 140303

Annex to the letter dated 3 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

[Original: French]

Note verbale dated 6 February 2003 from the Permanent Mission of Guinea to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of Guinea to the United Nations presents its compliments to the secretariat of the Counter-Terrorism Committee of the Security Council and has the honour to transmit herewith the second report of Guinea submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

Enclosure

Supplementary report of Guinea submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001 concerning counter-terrorism*

Subparagraph 1 (a)
Could Guinea please inform the Counter-Terrorism Committee about the outcome of the Central Bank's considerations regarding the "systematic control of private financial flows into the Republic of Guinea and of the portfolios of loans granted by the banks to certain entities deemed to be sensitive"?

There is no specific legislative provision in the Republic of Guinea for "the systematic control of private financial flows into the Republic of Guinea and of the portfolios of loans granted by the banks to certain entities deemed to be sensitive".

It should be noted here that the term "entities deemed to be sensitive" is not found in Guinean legislation.

In the absence of specific studies, the Central Bank has no particular conclusions on the matter. In practice, however, banks verify the source of funds in cooperation with their head offices and notify the Central Bank as circumstances warrant.

Whenever it appears that the information might be of some use to the Counter-Terrorism Committee, nothing prevents the Central Bank from reporting it to the Committee. The Central Bank intends, moreover, to develop a system for the "systematic control of private financial flows into the Republic of Guinea and of the portfolios of loans granted by the banks to certain entities deemed to be sensitive". It hopes to benefit from the support and assistance of the Committee and any other relevant institution in implementing the system.

Does Guinea intend to enact anti-money-laundering legislation?

The Republic of Guinea intends to enact a law against money-laundering and work on it is underway. However, some difficulties have arisen which are attributable to the low level of understanding of the practices and techniques used in money-laundering. The Central Bank is of the view that the elaboration of a training and information programme on these practices and techniques should be a prerequisite for the elaboration and adoption of anti-money-laundering legislation.

Subparagraph 1 (c)
Which legal and natural persons are entitled to request the freezing of assets?

Any legal or natural person in possession of a court order or document justifying their interest in requesting the freezing of assets.

* Attachments are on file with the Secretariat and are available for consultation.

Does Guinean legislation authorize foreign authorities to file a request for the freezing of funds with the Ministry of Justice?

Guinean legislation does not formally authorize foreign authorities to request the freezing of funds, except within the framework of reciprocal judicial assistance and cooperation arrangements, under which foreign authorities may request the freezing of funds. Also, as a State party to various international conventions, the Republic of Guinea is prepared to implement all of the provisions of these legal instruments.

How long does it take to freeze an account under the procedure described in the report?

The time needed to freeze an account under the procedure described is two weeks.

Subparagraph 1 (d)
What preventive controls and surveillance measures has Guinea put in place to ensure that funds received by charitable, religious or cultural organizations are not diverted from their stated purposes to terrorist activities?

Preventive controls and surveillance measures include:

- Monitoring by the regulatory authority of observance of their statutes by charitable and religious organizations;
- Transmittal to the regulatory authority of annual reports of activities;
- Monitoring of the execution of contracts.

Subparagraph 2 (a)
Could Guinea please explain how it criminalizes the recruitment of members of terrorist groups both inside and outside Guinea, as distinct from the criminalization of membership in or association with such a group?

The Republic of Guinea has not criminalized the recruitment of members of terrorist groups as distinct from the criminalization of membership in such a group.

Thus far, no cases of recruitment of members of terrorist groups have been reported in Guinea. The question of separate crimes therefore does not arise, given the principle of criminal law which states that, without law, there can be neither punishment nor crime.

In the Republic of Guinea, terrorist acts are covered by and punished under articles 505 et seq. of the Penal Code. The provisions of article 507 are included in the first report submitted pursuant to Security Council resolution 1373 (2001).

Nevertheless, there is nothing to prevent the Guinean legislature from deciding to include in the Penal Code a provision for criminalizing the recruitment of members of terrorist groups as distinct from criminalization of membership in such a group.

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Security Council

Distr.: General
6 March 2003

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Letter dated 3 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Liberia (see annex) submitted pursuant to paragraph 6 of resolution 1373 (2001).

I should be grateful if you could arrange for the text of the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

03-27499 (E) 110303

Annex

Letter dated 26 February 2003 from the Permanent Representative of Liberia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I present my compliments and hereby transmit a letter dated 24 February 2003 from the Minister for Foreign Affairs of the Republic of Liberia, Monie R. Captan, addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) (see enclosure), indicating measures and actions undertaken by the Government of Liberia in keeping with resolution 1373 (2001).

(*Signed*) Lami **Kawah**
Ambassador
Permanent Representative

Enclosure

Letter dated 24 February 2003 from the Minister for Foreign Affairs of Liberia addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Government of Liberia presents its compliments and, pursuant to the mandates of the Security Council Committee established pursuant to resolution 1373 (2001), has the honour to report that, in compliance with the mandatory measures of resolution 1373 (2001), the following measures have been taken:

1. On 11 September 2001, the Government of Liberia publicly denounced terrorism in all of its forms through messages to the United States Government expressing support for the global fight against terrorism.

2. On 8 October 2001, the President of Liberia issued a public statement announcing that the Republic of Liberia had joined the civilized world in the fight to rid the global community of those who harbour the will to destroy innocent lives. In the statement, the Government of Liberia offered the global coalition led by the United States the use of Liberian airspace and airport facilities. The Government of Liberia in the statement endorsed the right of the United States of America to act in self-defence, especially in the aftermath of the terrorist attacks of 11 September.

3. On 16 October 2001, the Liberian Government communicated with the agency responsible for its maritime and corporate registry, the Liberia International Shipping and Corporate Registry, submitting the names of individuals and organizations received in connection with terrorist activities. This activity is still ongoing as new names are submitted by the United States Government.

4. On 16 October 2001, and periodically, the Justice Ministry as well as the Central Bank of Liberia are being furnished with additional names to the terrorism list and a search indicates that none of the names have appeared in records of these agencies; the search still continues.

5. The Liberia International Shipping and Corporate Registry has reported that electronic searches are still under way to detect any of those links, but none of the names submitted have been found in the Liberian registry. Nonetheless the search still continues.

6. The security agencies of the Liberian Government (National Security Agency, National Bureau of Investigation) have developed an intelligence-sharing system with the Central Intelligence Agency and the Federal Bureau of Investigation of the United States Government; this exercise is still in progress. This process entails the monitoring of airports and land border points.

7. A circular transmitting all of the names and organizations listed on various lists received from the United States Government through its embassy in Monrovia has been circulated to all of the border points in the country with instructions to deny entry into Liberian territory as well as report any such cases to government authorities for onward transmission to the Counter-Terrorism Committee of the Security Council.

8. On 6 January 2003, the Government of Liberia ratified the following international conventions against terrorism:

(a) Convention No. 10106: Convention on Offences and Certain Other Acts Committed on Board Aircraft;

(b) International Convention for the Suppression of the Financing of Terrorism;

(c) Convention No. 141118: Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;

(d) Convention on the Marking of Plastic Explosives for the Purpose of Detection;

(e) 1998 Protocol for the Suppression of Unlawful Acts of Violence at Airports;

(f) Convention No. 21931: International Convention against the Taking of Hostages;

(g) International Convention for the Suppression of Terrorist Bombings.

The Government of Liberia would also like to state that, due to limitations with regard to its technical capacity to expertly detect terrorist networks, any assistance in training technicians in the area of terrorist detection would be highly appreciated.

(*Signed*) Monie R. **Captan**
Minister for Foreign Affairs